

Filed Monday  
May 17, 2010

IN THE IOWA DISTRICT COURT FOR LEE COUNTY

STATE OF IOWA, ex rel., IOWA  
DEPARTMENT OF NATURAL  
RESOURCES (99AG23542),

Plaintiff,

vs.

PIEPER, INC.,

Defendant.

LAW NO.

CVEQ005345(s)

**PETITION AT LAW**

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (DNR) and  
for its claim against Defendant Pieper, Inc. (Pieper), states as follows:

**INTRODUCTION**

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a  
permanent injunction against Pieper for repeated water pollution and animal feeding operation  
violations, including violations of two (2) prior Administrative Orders, committed at the Defendant's  
confinement feeding operation for swine located in Lee County, Iowa.

**PARTIES**

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code  
section 455A.2.
4. Defendant Pieper, Inc., is an Iowa corporation with its principal place of business at  
3638 - 190<sup>th</sup> Street, Wever, Lee County, Iowa. At all times material hereto, Michael Pieper was the  
president of the corporation.

## DEFINITIONS

5. "Animal feeding operation" means "a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation." Iowa Code § 459.102(4).

6. "Confinement feeding operation" means "an animal feeding operation in which animals are confined to areas which are totally roofed." Iowa Code § 459.102(14).

7. "Confinement site manure applicator" means "a person, other than a commercial manure service . . . or service representative, who applies manure on land if the manure originates from a manure storage structure." Iowa Code § 459.102(17).

8. "Manure" means "animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses." Iowa Code § 459.102(34).

9. "Point source" means "any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged." Iowa Code § 455B.171(17).

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10. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

11. "Release" means "an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure." 567 Iowa Admin. Code 65.1.

12. "Spray irrigation equipment" means "mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during

application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for the aerial application of water to aid the growing of general farm crops.” Iowa Code § 459.102(45).

13. “Water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(37). The drainage system at issue in this matter is a “water of the state” as defined in Iowa Code section 455B.171(37).

## **JURISDICTION**

### **Water Pollution Control Regulations**

14. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The DNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

15. The Iowa Environmental Protection Commission (EPC) has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6) and 455B.173(2), (3) and (6). The EPC’s rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

16. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR. Iowa Code § 455B.186(1) and 567 Iowa Admin. Code 62.1(1).

17. All Iowa surface waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)(c).

18. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

19. The Attorney General is authorized, at the request of the DNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

#### **Animal Feeding Operations Regulations**

20. The EPC has the authority to establish rules relating to the construction, expansion, or operation of animal feeding operations, including related animal feeding operation structures. Iowa Code § 459.103(1). These rules shall include, but are not limited to, minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing. Iowa Code § 459.103(1). These rules are contained in 567 Iowa Admin. Code 65.

21. All manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface water or groundwater pollution. Iowa Code § 459.311(2) and 567 Iowa Admin. Code 65.2(7).

22. Any spray irrigation equipment used for applying manure shall be operated in a manner and with an application rate and timing that does not cause runoff of the manure into the property adjoining the property where the spray irrigation equipment is being operated. 567 Iowa Admin. Code 65.3(2)(c).

23. Any person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but not later than six hours after the onset or discovery of the release. 567 Iowa Admin. Code 65.2(9)(a).

24. Any commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. 567 Iowa Admin. Code 65.19(1).

25. The owner of a confinement operation who is required to submit a manure management plan must submit an updated manure management plan to the department on an annual basis. Iowa Code § 459.312(3). The department shall provide for a date that each updated manure management plan is required to be submitted to the department. Iowa Code § 459.312(3).

26. A manure management plan shall include a phosphorous index. The phosphorous index shall be used to determine application rates, based on the number of pounds of phosphorous that may be applied per acre and application practices. Iowa Code § 459.312(10)(2)(a). Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorous Index as specified by the USDA Natural Resources Conservation Service (NRCS) Iowa Technical Note No. 25. 567 Iowa Admin. Code 65.17(17).

27. The department and the attorney general may enforce the provisions of subchapter III in the same manner as provided in section 455B.175. Iowa Code § 459.601(2)(b).

28. If there is substantial evidence that any person has violated or is violating any provision of part 1 of division III of chapter 455B, chapter 459, subchapter III, or chapter 459A, or any rule or standard established or permit issued pursuant thereto, the director may issue an order

directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. Iowa Code § 455B.175(1).

29. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604. Iowa Code § 455B.175(3).

30. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

31. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

#### **Prior Administrative Orders**

32. On February 7, 1978, the DNR issued Administrative Order No. 78-WQ-009 to Defendant Pieper, Inc. The Order required the defendant to do the following: apply for an operation permit for operation of its confinement facility by March 15, 1978; cease disposal of swine wastes into waters of the state, including but not limited to any drainage ditches; and cease disposing of swine wastes near any ditch, drainage area or other water of the state in such a manner or in such amounts as to allow surface runoff to carry the wastes into a water of the state. A copy of Administrative Order No. 78-WQ-009 is attached hereto as Exhibit A, and by this reference incorporated herein.

33. On August 7, 1991, the DNR issued Administrative Order No. 91-WW-36 to Defendant Pieper, Inc. The Order required the defendant to do the following: retain all wastes produced in the confinement units; remove wastes as necessary to prevent overflow or discharge;

dispose of the removed wastes on land in a manner which will not cause water pollution; if requested by the DNR, submit information concerning the plans and specifications of the waste control facilities used for the operation; obtain construction permits for all future construction projects at the operation; and pay a penalty of Five Hundred Dollars (\$500.00) to the DNR within sixty (60) days of receipt of this order, which Defendant paid on September 5, 1991. A copy of Administrative Order No. 91-WW-36 is attached hereto as Exhibit B, and by this reference incorporated herein.

34. On February 23, 2006, the DNR and Pieper entered into Administrative Consent Order No. 2006-SW-05/2006-AFO-04. The Order in part required Defendant Pieper to do the following: submit a written plan detailing how it will properly manage and dispose of dead livestock at the property; provide a detailed schematic drawing of all permanent manure piping systems and storage tanks on the property, including the designation of the locations and uses for such piping systems and storage tanks; and pay a penalty of Five Thousand Dollars (\$5,000.00) to the DNR within thirty (30) days of receipt of this order, which was paid contemporaneously with the issuance of the order. A copy of Administrative Consent Order No. 2006-SW-05/2006-AFO-04 is attached hereto as Exhibit C, and by this reference incorporated herein.

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## FACTS

35. Pieper, Inc. operates a swine animal feeding operation located at 3638 - 190<sup>th</sup> Street, Wever, Lee County, Iowa. The facility consists of a 7,100 head gestation, farrowing, and finishing operation as well as a 1,300 head nursery operation, all contained within ten (10) buildings. Manure storage at the facility consists of below building pits and a large slurry tank.

36. On June 10, 2008, DNR officials sent Defendant Pieper, Inc. a letter informing Pieper that the manure management plan (MMP) annual update was due November 1, 2008, and that it must contain the Iowa Phosphorous (P) Index. On September 15, 2008, DNR officials sent Defendant

Pieper, Inc. a reminder that the manure management plan (MMP) annual update was due November 1, 2008. On November 3, 2008, Defendant Pieper, Inc. submitted an annual MMP update without the P index.

37. On December 24, 2008, DNR officials sent Defendant Pieper, Inc. a letter informing Pieper that their MMP annual update submission was incomplete. The letter gave Pieper ten (10) days from the date of the letter to provide a complete submission.

38. On January 13, 2009, DNR officials sent Defendant Pieper, Inc. a letter notifying Pieper that the DNR has not received the annual MMP update, including the P index. The letter outlined the prior notices the DNR sent to Pieper informing it of the MMP annual update deadlines and content requirements. The letter also detailed the contents of telephone conversations between the DNR and Michael Pieper on January 8, 2009, in which he indicated that he hoped to submit the updated MMP within ten (10) to fourteen (14) days. During the conversation, DNR officials informed Pieper that it was already over sixty (60) days late.

39. On January 20, 2009, Defendant Pieper, Inc. submitted an annual MMP update eighty-one (81) days late. On January 26, 2009, DNR officials sent Defendant Pieper, Inc. a letter informing Pieper that the MMP update submitted appeared complete.

40. On March 19, 2009, the DNR received a complaint regarding manure runoff at the Pieper facility. The complainant stated that on both March 18 and 19, 2009, the complainant had observed manure being land-applied on a field at the Pieper operation with an irrigation gun. On both days, the complainant saw manure running off the field and into a drainage ditch on the west side of the field.

41. On March 20, 2009, DNR officials visited the Pieper, Inc. facility and observed liquid manure running from a field at the Pieper facility into a drainage ditch. The stream of liquid manure



was green in color and had an odor of hog manure. The officials followed the stream of liquid manure to determine the source and came to a point in the field where the manure dissipated and the field appeared saturated. The officials observed a tractor and irrigator system on the other side of the field, which was owned by Pieper, Inc.

42. During the inspection, the officials took laboratory samples of the stream of liquid manure from the following locations: at the point in the field where the stream of liquid manure had dissipated; the confluence of the stream of liquid manure and the ditch; approximately 100 - 200 feet upstream of the confluence within the ditch; and approximately 100 - 200 feet downstream of the confluence within the ditch. The results of the laboratory samples indicated extremely high concentrations of ammonia: 4,100 milligrams per liter (mg/L) from the field sample; 4,000 mg/L from the confluence of the stream of liquid manure and the ditch; 1.6 mg/L from the upstream sample; and 230 mg/L from the downstream sample.

43. During the inspection, Michael Pieper arrived onsite and was informed by the DNR to stop the manure flow in the field and start pumping the manure out of the ditch. Pieper indicated that a backhoe was on the way to stop the discharge.

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44. On March 21, 2009, Michael Pieper called the DNR to provide an update on the cleanup at the Pieper facility. Pieper informed the DNR that the cleanup was going well and that the cause of the discharge was a gasket that had ruptured where the hose connected to the irrigator. He further stated that he believed the rupture occurred during the morning of March 20, 2009, and that he did not know of the discharge until DNR officials arrived on the site on March 20, 2009.

45. On March 23, 2009, DNR officials conducted a follow-up visit to the Pieper facility to observe the cleanup efforts at the site. The officials met Michael Pieper at the drainage ditch, and a field test from the ditch indicated ammonia levels were still high. The officials informed Pieper that

the pumping should continue. During the inspection, in response to an inquiry from DNR officials, Pieper told the officials that the manure applicators he employed were certified.

46. On March 27, 2009, DNR officials conducted a follow-up investigation at the Pieper facility. Michael Pieper informed the officials that they had stopped pumping because the ditch was much clearer. After the officials collected laboratory samples that showed ammonia levels at some areas around facility were still above 3 mg/L, the officials asked Pieper to continue pumping the drainage ditch.

47. On March 31, 2009, DNR officials sent Defendant Pieper, Inc. a Notice of Violation (NOV), detailing the violations discovered during the March 20, 2009 inspection. The letter also ordered Pieper to submit a written report to the DNR by April 20, 2009, detailing that the release was due to a ruptured gasket where the pipes connected to the irrigator, and any other information required by the rules, including the name and contact information of the persons operating the spray equipment during the time in question.

48. On April 18, 2009, Defendant Pieper, Inc. sent the DNR the written report required by the March 31, 2009 NOV. In the letter, Pieper stated that it had applied manure on March 20, 2009 from 7:30 am until approximately 12:00 pm. Pieper also stated that when the employees moved the hard hose machine to pump out the drainage ditch after the manure release, they discovered a gasket had ruptured on the bottom of the hose, just below the spray gun, which was the cause of the release. Defendant Pieper, Inc. also stated that it applied manure on March 19, 2009 as well, but that there was no material entering the drainage ditch on that day.

49. On April 27, 2009, DNR officials sent Defendant Pieper, Inc. a letter requesting that it furnish the names and contact information for the employees that had been applying manure during March 19 and 20, 2009. The information requested had not been included in the April 19, 2009

report. On May 7, 2009, Pieper faxed to the DNR the names and contact information for the three (3) employees who land-applied manure on March 19 and 20, 2009. DNR officials subsequently determined that the three (3) individuals applying the manure were not certified when they were applying manure on March 19 and 20, 2009.

50. On May 12, 2009, the DNR sent a NOV to Terry Reed, Joe Ferguson, and Larry Oppenheimer, employees of Pieper, Inc., for failure to be certified when land-applying manure on March 19 and 20, 2009.

## **VIOLATIONS**

### **Water Pollution Control Violations**

51. On or before March 20, 2009, Defendant Pieper, Inc. discharged manure into a water of the state in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1), and Administrative Order Nos. 78-WQ-009 and 91-WW-36.

52. On or before March 20, 2009, Defendant Pieper, Inc. discharged manure into a water of the state, producing objectionable color, odor or other aesthetically objectionable conditions in the water in violation of 567 Iowa Admin. Code 61.3(2)(c).

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### **Animal Feeding Operation Violations**

53. On or before March 20, 2009, Defendant Pieper, Inc. land-applied manure in a manner which caused surface or groundwater pollution in violation of Iowa Code section 459.311(2) and 567 Iowa Admin. Code 65.2(7).

54. On or before March 20, 2009, Defendant Pieper, Inc. operated spray irrigation equipment used for applying manure in a manner and with an application rate and timing which caused runoff of manure onto adjoining property in violation of 567 Iowa Admin. Code 65.3(2)(c).

55. On or before March 20, 2009, Defendant Pieper, Inc. failed to notify the DNR of a manure release within six hours after the onset or discovery of the release in violation of 567 Iowa Admin. Code 65.2(9)(a).

56. On or before March 20, 2009, three (3) employees of Pieper, Inc. land-applied manure without proper certification in violation of 567 Iowa Admin. Code 65.19(1).

57. Defendant Pieper, Inc. failed to timely submit a complete manure management plan (MMP) update by November 1, 2008 in violation of Iowa Code section 459.312(3).

#### **PRAYER FOR RELIEF**

WHEREFORE, State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

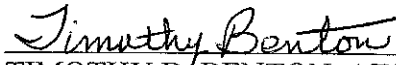
- a. assess a civil penalty against Defendant Pieper, Inc., pursuant to Iowa Code section 455B.191(2), for each day of violation of Iowa Code sections 455B.186(1), 459.311(2), and 459.312(3); 567 Iowa Admin. Code 61.3(2)(c), 62.1(1), 65.2(7), 65.3(2)(c), 65.2(9)(a), and 65.19(1); and Administrative Order Nos. 78-WQ-009 and 91-WW-36, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;
- b. issue a permanent injunction enjoining Defendant Pieper, Inc., from any violation of Iowa Code sections 455B.186(1), 459.311(2), and 459.312(3); 567 Iowa Admin. Code 61.3(2)(c), 62.1(1), 65.2(7), 65.3(2)(c), 65.2(9)(a), and 65.19(1); and Administrative Order Nos. 78-WQ-009 and 91-WW-36.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

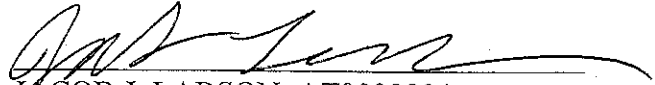
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Assistant Attorney General



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Assistant Attorney General

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Des Moines, Iowa 50319

Phone: (515) 281-5351

Fax: (515) 242-6072

E-mail: [jl Larson@ag.state.ia.us](mailto:jl Larson@ag.state.ia.us)

ATTORNEYS FOR PLAINTIFF

K.O.#6

IOWA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ORDER OF THE EXECUTIVE DIRECTOR

IN THE MATTER OF:

Pieper, Inc.  
Wever, Iowa

ORDER NO. 78-WQ-009

TO: William Pieper  
Pieper, Inc.  
Box 195  
Wever, Iowa 52658

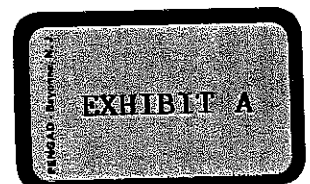
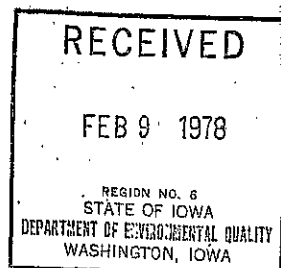
Pursuant to Subsection 455B.34(1), Code of Iowa, 1977, you are hereby notified that the Executive Director of the Iowa Department of Environmental Quality has determined that:

A. Pieper, Inc., William Pieper, owner, operates a total confinement swine feeding operation located at Sec. 16, T68N, R3W, Lee County, Iowa.

B. The capacity and animals fed at said animal-feeding operation exceeds 2,500.

C. Pieper, Inc. has not applied to the Department of Environmental Quality for an operation permit, and therefore is in violation of Rule 400--20.4(2), Iowa Administrative Code, and Section 455B.45, Code of Iowa, 1977.

D. Pieper, Inc. has disposed of swine wastes from said operation in violation of Rule 400--20.2(6), Iowa Administrative Code, and Section 455B. 48, Code of Iowa, 1977, on at least two occasions. Specifically, on or about June 24, 1976, swine wastes were dumped into a drainage ditch which ultimately discharges into the Mississippi River, and along side of Lost Creek in such a manner that surface runoff carried the wastes into the creek. Again, on or about December 7, 1977, swine wastes were dumped into a county road ditch which drains into a larger drainage waterway, then into the Mississippi River.

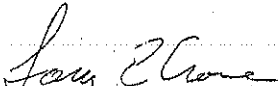


THEREFORE, Pieper, Inc. is hereby ordered to comply with the following provisions in order to cease further violations of the above-cited Rules and Statutes:

1. Pieper, Inc. shall apply for an operation permit for operation of its total confinement swine-feeding operation, by March 15, 1978.

2. Pieper, Inc. shall immediately and hereafter cease disposal of swine wastes into waters of the state, including but not limited to any drainage ditches. In addition, Pieper, Inc. shall not dispose of swine wastes near any ditch, drainage area or other water of the state in such a manner or in such amounts as to allow surface runoff to carry the wastes into a water of the State.

Dated this 7<sup>th</sup> day of February, 1978, at Des Moines, Iowa.

  
Larry E. Crane, Executive Director

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER

F.O.6/11 [REDACTED]

BEG

08/08/91

IN THE MATTER OF:

PIEPER, INC.  
Lee County

ORDER NO. 91-WW-36

AS  
Agriculture  
File

TO: Pieper, Inc.  
c/o William Pieper  
RR 1, P.O. Box 195  
Wever, IA 52658

RECEIVED

AUG 16 1991

IOWA DEPARTMENT OF  
NATURAL RESOURCES

I. SUMMARY

This order requires you to cease the discharge of pollutants into waters of the State, to retain and properly dispose of all animal wastes produced in the confinement units, to obtain approval of the expanded animal-feeding operation, and to pay an administrative penalty of \$500.00.

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and chapter 567--10(455B), Iowa Administrative Code (I.A.C.), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Pieper, Inc. owns and operates a swine feeding operation located in NE 1/4, NW 1/4, Sec. 21, T68N, R3W, Lee County, Iowa. A capacity of over 5,000 swine (over 55 lbs.) are fed and housed in roofed enclosures. Animal wastes from this operation are handled from below-building pits and a 1,000,000 gallon slurry storage tank. Wastes are land applied by spray irrigation and honey wagon.

2. On April 1, 1991, wastes from this operation were being spray irrigated on Pieper property in Sec. 20, southwest of the confinement operation. Manure had pooled on the ground and flowed into the adjacent county road ditch, through a culvert, and into a drainage ditch. A sample of the waste flowing through the culvert was analyzed to exert a 5-day biochemical oxygen demand ("BOD") of 44,920 mg/l, extremely high-strength waste. The waste discharge caused a scum layer on and discoloration of the water in the drainage ditch. Upon direction of the Lee County Sanitarian, the drainage ditch was blocked and the wastes were cleaned from the drainage ditch and the road ditch before it reached the Mississippi River.

PENGAD - Beyond, N. J.

EXHIBIT B



IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: Pieper, Inc.

3. The site was investigated by Department staff and the Lee County Sanitarian on April 18, 1991. Water samples taken on that date indicated that the chemical quality of the drainage ditch was moderately polluted, and no further clean up was required.

4. During the investigation on April 18, 1991, it was learned that Pieper, Inc. had constructed additional animal-feeding units, with associated waste control facilities, which expanded the animal capacity above 5,000 head of swine. No permit for this expansion was obtained. Mr. Pieper supplied information to the Department on June 10, 1991, regarding the new construction. The Department will evaluate this information along with information previously submitted in connection with permitted facilities, to determine whether adequate waste storage capacity and disposal facilities exist. The Department may require additional or updated information in order to make this evaluation.

5. Pieper, Inc. has had operating permits which fully informed it of the animal waste control requirements, and was issued a prior Administrative Order in 1978, prohibiting violations of this type. In addition, an incident of improper waste disposal was cited by the County Sanitarian in 1986, and the corporation was again informed of this Department's animal waste control requirements.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from this department. Animal wastes from confinement units are pollutants, and the above-described waters are waters of the State, as those terms are defined in Iowa Code section 455B.171. There is no permit authorizing these discharges, thus Iowa Code section 455B.186 has been violated.

2. Department rule 567--65.2(455B), Iowa Administrative Code (IAC), requires that all wastes generated in a confinement feeding operation, as defined in 567--65.1(455B), IAC, be totally retained between periods of waste disposal; that wastes shall be removed from waste control facilities as necessary to prevent overflow or discharge; and that all wastes removed be disposed of by land application in a manner which will not cause surface or ground water pollution. The above facts disclose violation of this rule.

3. Iowa Code section 455B.183(1) prohibits the construction of a waste disposal system without a permit from the Department. Iowa Code section 455B.183(3) prohibits the operation of such

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: Pieper, Inc.

systems without a permit. Iowa Code section 455B.173(3) authorizes the EPC to adopt rules in this regard. The Commission has adopted 567--65(455B), IAC pertaining to animal feeding operations. Confinement feeding operations, as opposed to open feedlots, are defined as totally roofed operations in which wastes are stored or removed as a liquid or semiliquid. The operating parameters of confinement operations are defined in these rules, and no operation permit is required unless notified by the Department pursuant to rule 65.4. Construction permits are required for swine confinement operations exceeding 5,000 head, if formed waste storage tanks are used. 65.6(1)"b".

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to redress and prevent violations of the above-cited provisions of law:

1. Retain all wastes produced in the confinement units, remove wastes as necessary to prevent overflow or discharge, and dispose of the removed wastes on land in a manner which will not cause water pollution. Discharge of pollutants to a water of the State, directly or indirectly, is prohibited.

2. If requested by the Department, submit additional information such as "as-built" plans and specifications for the waste control facilities for this operation, information on the maximum animal capacity, live animal weight, annual waste volume produced, and waste storage capacity, in order to obtain approval of these facilities. Such information shall be submitted within 30 days of being requested.

3. Obtain all future construction permits prior to the initiation of construction, alteration or modification of facilities requiring such permit.

4. A penalty of \$500.00 shall be paid to the department within 60 days of receipt of this order.

VI. PENALTY

1. Chapter 567--10, I.A.C., was adopted by the Commission to implement Iowa Code section 455B.109, which authorizes the assessment of administrative penalties for minor violations of Iowa Code chapter 455B or rules, permits and orders promulgated or issued pursuant to chapter 455B. In view of the above-cited violations, the department has the authority to assess a penalty in this matter.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: Pieper, Inc.

2. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5000.00 per day of violation. Criminal sanctions are also authorized for prohibited discharges. Pursuant to rule 567--10.2(455B), I.A.C., it has been determined that the most equitable and efficient means of redressing and abating the violations at this time is through the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit. The discharge event could have been avoided through more diligent attention to and operation of the waste control and disposal facilities. The failure to obtain a permit prior to construction prevented the DNR from evaluating the adequacy of facilities prior to installation. This time saving factor has allowed them to operate at a greater capacity sooner, thereby affecting a cost savings by avoiding construction and operating delays. A definite monetary figure cannot be calculated, but it is fair to assume that \$100.00 for additional labor and possibly materials to improve the waste handling system, and avoidance of construction delays, would be a conservative estimate of economic benefit, and that amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial penalties are authorized by statute. Despite the high penalties authorized, the department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves moderate water pollution. A construction permit is required to be obtained prior to construction in order to allow for the prior review of plans and specifications pertaining to a potential pollution source. The purpose of this review is to determine if the source meets all applicable standards and operating requirements. This review insures that the interests of the citizens of Iowa in clean water are protected. Construction prior to obtaining required permits also threatens the integrity of the permit and pollution control programs. For these reasons, \$200.00 is assessed for this factor.

c. Culpability. This matter appears to involve negligent rather than intentional acts. Although Mr. Pieper did cooperate to cease and clean up the discharge, more diligence should have been exercised to avoid it in the first place. Pieper, Inc. also has the duty to remain knowledgeable of the department's permitting requirements and to be alert to the probability that its conduct is subject to the rules of the department. There was

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
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prior knowledge of the permit requirements. Therefore, \$200.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 561--7.5(1), Iowa Administrative Code, as adopted by reference by 567--7, I.A.C., a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and chapter 561--7, Iowa Administrative Code.

VIII. NONCOMPLIANCE

If this Order is timely appealed or the penalty is timely paid, this matter will be handled administratively. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties or criminal fines pursuant to Iowa Code section 455B.191. The department reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this order and any subsequent violations if the penalty is not timely paid.

Any questions regarding this order should be directed to:

Michael P. Murphy  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
900 East Grand Avenue  
Des Moines, Iowa 50319-0034  
515/281-8973

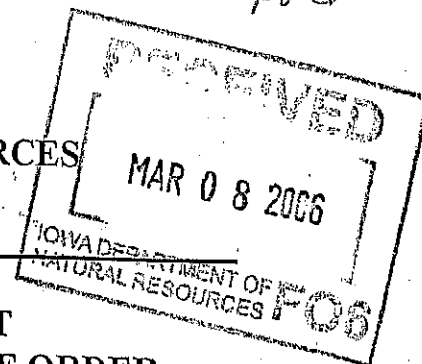
  
LARRY J. WILSON, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of  
August, 1991

91016DNR0032

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**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**



**IN THE MATTER OF:**

**PIEPER, INC.;**  
Lee County, Iowa

**CONSENT  
ADMINISTRATIVE ORDER**

NO. 2006-SW- 05  
NO. 2006-AFO- 04

**TO:** Mike Pieper, Registered Agent  
3635 190<sup>th</sup> Street  
Wever, IA 52658

**I. SUMMARY**

Pursuant to this Order, Pieper, Inc. agrees to:

- Within 30 days of the receipt of this Order, submit a written plan detailing how it will properly manage and dispose of dead livestock;
- Within 30 days of the receipt of this Order, provide a schematic drawing of all permanent manure piping systems and storage tanks on the Property, including the designation of and use(s) for such piping systems and storage tanks; and
- Pay a penalty of \$5,000.00.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Jim Sievers  
IDNR Field Office #6  
1023 West Madison  
Washington, Iowa 552353  
Ph: 319-653-2135

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, Iowa Code Chapter 459, subchapter III and the rules adopted or permits issued pursuant thereto; Iowa Code section 459.603 which authorizes the Director to assess civil penalties for violation of Iowa Code chapter 459, Subpart III, and the rules adopted or permits issued pursuant thereto; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1

**EXHIBIT C**

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Pieper, Inc.

(solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Pieper, Inc. owns property located in Section 21, Township 68 North, Range 3 West, Lee County, Iowa (the "Property").
2. On April 11, 2005, Iowa Department of Natural Resources (department) Field Office #6 received a complaint alleging the improper disposal of dead hogs at a facility on the Property operated by Pieper, Inc.
3. On April 12, 2005, Environmental Specialist Jim Sievers investigated the complaint. A pile of several dozen dead baby pigs was located north of a compost pile. Several dozen adult pigs were observed on top of, next to, and partially buried in the northern edge and the southern quarter of the compost pile, where sawdust had blown off of the compost pile. These areas of the compost pile were not functioning as required to properly compost the animals.
4. On May 16, 2005, departmental personnel investigated a complaint alleging the improper land application of manure by Pieper, Inc. The complaint alleged that liquid manure was flowing into a drainage ditch. A metal pipe, later determined to be part of a manure application system, was observed on the west side of 190<sup>th</sup> Street, along the property of Pieper, Inc. The manure application pipe terminated several feet south of the drainage ditch and did not enter the drainage ditch. Manure solids were observed at the end of the pipe. It was observed that some of the manure solids may have run partially down the grassy bank of the drainage ditch as evidenced by yellowed grass in an area from the manure solids towards the drainage ditch. No contaminated water was observed. Mike Pieper, the President of Pieper, Inc., came to the scene and discussed the complaint. Mr. Pieper stated that the manure was pumped from the facilities' slurry storage tank, through the piping system, to the field to be land applied with a spray irrigation system. The location that was inspected was the point at which the field pipe was connected to the spray irrigation system. Mr. Pieper was instructed to remove the manure solids. A return visit on May 17, 2005 confirmed that the manure solids had been removed.
5. On June 6, 2005, a Notice of Violation was issued to Pieper, Inc. The Notice was based upon the illegal discharge of manure to a water of the state, as documented on May 16, 2005. Pieper, Inc. has advised the Department it would contest such a determination based on the facts of this case.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
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Pieper, Inc.**

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.
2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the department, unless otherwise provided by rule. The Department believes the above facts with respect to the animal composting pile represent a violation of these provisions.
3. Iowa Code section 459.103 authorizes the Environmental Protection Commission to adopt rules establishing manure control standards relating to animal feeding operations. The Commission has done so at 567 IAC 65.
4. Iowa Code subsection 459.311(2) and 567 IAC 65.2(7) require that all manure removed from an animal feeding operation or its manure control facility be land applied in a manner which will not cause surface or groundwater pollution. The Department believes the above-stated facts disclose violations of these provisions.

**V. ORDER**

THEREFORE, solely to resolve the matters at issue in this Order and to avoid the cost and uncertainty of an administrative hearing and litigation, Pieper Inc. hereby agrees, and is ordered to:

1. Within 30 days of the receipt of this Order, submit a written plan detailing how it will properly manage and dispose of dead livestock at the Property; and
2. Within 30 days of the receipt of this Order, provide a detailed schematic drawing of all permanent manure piping systems and storage tanks on the Property, including the designation of the locations and uses for such piping systems and storage tanks.

A penalty of \$5,000 is assessed to Pieper, Inc. and shall be paid to the department within 30 days of receipt of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code sections 455B.191 and 459.603 authorize the

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

**Pieper, Inc.**

assessment of civil penalties of up to \$5,000 per day for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567 IAC 10. Pursuant to this chapter, the department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Pieper, Inc. has achieved an economic benefit from its conduct with regard to the compost pile. Costs avoided include landfill or rendering fees, labor costs, and other equipment costs. Based upon these facts, \$2,000 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of dead animals may threaten the groundwater of the state and presents a risk of disease for livestock, wildlife, and humans. Actual harm to the environment was documented by visual observation of the impacted vegetation in the drainage ditch. The violations span multiple program areas and present potential harm related to the manure handling and dead animal disposal practices of Pieper, Inc. Based on the above considerations, \$2,500 is assessed for this factor.

c. Culpability. The violations in multiple program areas indicate a disregard for applicable regulations. Based upon these factors, \$500 is assessed for this factor.

The department agrees that \$3,000 of the foregoing penalty amount specifically is related to solid waste disposal issues on the Property is not in any way related to the construction or operation of an animal feeding operation structure in violation of the statutes or rules adopted by the department. Therefore, the department agrees, as an express condition to and in consideration of the agreement of Pieper, Inc. to execute this Order, including the waiver of its appeal rights as set forth in Section VII, below, that this Order shall not constitute a violation which meets the requirements of violation described in Iowa Code section 657.11(3).

## **VII. WAIVER OF APPEAL RIGHTS**


Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Pieper, Inc. By signature to this Order, all rights to appeal this Order are waived.



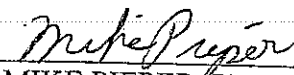
IOWA DEPARTMENT OF NATURAL RESOURCES  
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Pieper, Inc.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.191 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

  
JEFFREY R. VONK, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of  
February, 2006

  
MIKE PIEPER, PRESIDENT  
PIEPER, INC.

Dated this 29 day of  
Jan, 2006

Field Office #6; Jon Tack; VI.C.; VIII.D.1V